IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2408 OF 2004

Krishnaji Shankar Keskar ..Petitioner
Vs.
The State of Maharashtra & Ors. ..Respondents

Mr.G.N.Salunkhe, Adv. for Petitioner
Mr.R.M. Patne, A.G.P. for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 8TH FEBRUARY, 2005.

P.C.

. The Petitioner had resigned from the Government service. He had joined on 18th July, 1974 and as per his averments had resigned on 28th January, 1987. The present petition has been filed in the year 2004 claiming pension from the State Government. Rule 46 (1) of the Maharashtra Civil Services (Pension) Rules, 1982, provides that resigning from the service or a post entails forfeiture of past service. In other words whatever service has been put in stands forfeited.

. Rule 46(2) then provides that in case where the employee resigns with proper permission to take up another appointment whether temporary or permanent under the Government whose service qualifies for pension.

. Learned Counsel for the petitioner seeks to

rely on Rule 30. Rule 30 provides for counting of qualifying service. The first proviso only provides that at the time when the Government employee retires he must hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency. Second proviso further provides that in case where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntary after the completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, invalid or, as the case may be, Retiring Pension, Retirement Gratuity, and Family Pension at the same scales as admissible to appointment of Government servant. The qualifying service therefore has to be counted if the petitioner was in service and entitled to pension.

. By virtue of rule 46(1) therefore on resignation the service stands forfeited and cannot be counted for pension.

. Learned Counsel for the petitioner seeks to rely on the judgment in case of **Parshuran Vithoba Bhandare Vs. State of Maharashtra and another, Mh.L.J.2001(4), 587.** It is not possible to know

whether the employee therein had resigned or retired. However, the learned Division Bench has invoked Rule 30. If that is the case, apparently the learned Division Bench was referring to second proviso i.e. temporary Government employee after completing 10 years in government service retiring.

. Learned Counsel relies on the judgment in the case of State of Maharashtra Vs Shashikant S. Patil in W.P. No.8484 of 2003. By that judgment the learned Judge refused to interfere in the exercise of extra ordinary jurisdiction and refused to consider the issue whether the respondent therein had completed required number of years his services under State as it was not raised before the tribunal. The Apex Court dismissed the S.L.P. The learned Division Bench had no occasion to consider Rule 46(1) . In our opinion therefore, it cannot be said that there is any concluded issue in the judgment of this Court dated 17th August, 2004.

. For all the aforesaid reasons apart from the fact that petitioner had moved this Court after nearly 17 years, we do not think this to be a fit case, to exercise our extra ordinary jurisdiction. Therefore, petition is dismissed.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)